

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA)
)
vs.) CR 04-414 (PG)
)
OMAR SANTIAGO MIRANDA)

SENTENCING

held before the HONORABLE SENIOR JUDGE JUAN M. PEREZ GIMENEZ on Friday, July 31, 2009, at 11:30 a.m.

FOR THE GOVERNMENT:

ANTONIO BAZAN, AUSA

FOR THE DEFENDANT:

LYDIA LIZARRIBAR-MASINI, ESQ.

(The case was called with the defendant present and being assisted by the official court interpreter.)

3 (The parties are ready to proceed.)

4 THE COURT: In this matter the Court had denied a
5 request by the defendant to withdraw his plea of guilty.

6 Subsequent to that, the Court ordered a mental
7 evaluation, which was performed and noticed to the Court on
8 August 7, 2008.

9 You do have a copy of that, Counsel?

10 MS. LIZARRIBAR-MASINI: Yes, Your Honor.

11 THE COURT: Mr. Bazan, you have a copy?

12 MR. BAZAN: Yes, Your Honor.

13 MS. LIZARRIBAR-MASINI: The defendant also has a copy
14 of it, Your Honor.

15 THE COURT: Okay. I notice here that in the report,
16 it states that the personnel from the Federal Bureau of Prisons
17 requested that records from Dr. Rafael Padro Castro, which
18 defendant apparently told the personnel that those were his
19 psychological records that could be obtained. He provided a
20 signed consent form.

21 MS. LIZARRIBAR-MASINI: That's right.

22 THE COURT: A signed consent form for the release of
23 said information. But on the date that the report was prepared
24 and disseminated, that those documents had not been obtained.

25 Counsel, have you been able to obtain subsequent to

1 August 7, 2008, any documentation?

2 MS. LIZARRIBAR-MASINI: From Dr. Padro, no, Your
3 Honor. I met with him at his office. And he did tell me that
4 he would give them to me; however, they have not been made,
5 given to my office at any time.

6 I think that the only way that I can get any documents
7 from him would be through a Court order; because as I said, I
8 have met with him in his office, been there for three hours
9 waiting for him to give me a copy of his file. And that file
10 has never appeared, according to Dr. Padro.

11 THE COURT: But do you have any other information that
12 would contradict what was contained in the evaluation?

13 MS. LIZARRIBAR-MASINI: I don't have any other
14 information, Judge. However, defendant, Your Honor, has used
15 drugs for years. In fact, two months ago, he was found at MDC
16 to have used drugs.

17 So throughout time, he has been using drugs. And one
18 of the facts that we told this Court that had happened at his
19 Change of Plea hearing was that on that day, he had been using
20 drugs.

21 It is sometimes hard to believe that you can find
22 drugs at MDC, Your Honor, but obviously if defendant is there
23 isolated at SHU and he is positive to the use of drugs, we can
24 be certain that those drugs are there at MDC.

25 His use of drugs on the day that we were here for his

1 Change of Plea hindered, Your Honor, I do think that he could
2 make a valid plea on that day. And that is why we had asked
3 this Court, Your Honor, to give him a trial.

4 He has always stated that he is innocent at all times.

5 On that date we came here to start trial, Your Honor,
6 ready to start a trial, and on that day, in a few minutes a
7 plea was made.

8 The Court knows, because I have filed it, that I
9 didn't go to see him for over a month after that day.

10 The first day I went over to see him, Your Honor, the
11 defendant shouted to me from one corner to another, "Why
12 haven't you been here? I did not want to plead guilty. I was
13 forced."

14 Defendant has always claimed, Your Honor, that he is
15 innocent. And I think that he should be given a trial date
16 instead of being sentenced.

17 As to his drug use, Your Honor, what can I say? Drugs
18 are at MDC regardless of whether you are in SHU or at your
19 unit.

20 We are at fault, Your Honor. And I say "we," because
21 I am part of the whole system.

22 (The defendant is raising his hand.)

23 MS. LIZARRIBAR-MASINI: And I think that he should be
24 given a trial date, Your Honor.

25 THE COURT: All right. Well, I've already resolved

1 that issue.

2 MS. LIZARRIBAR-MASINI: I understand that.

3 THE COURT: A few months back.

4 MS. LIZARRIBAR-MASINI: But in the interest of
5 justice, Your Honor, when someone has been adamant that they
6 have been innocent throughout the years -- and we have been
7 here for four or five years in this case. And on that day that
8 he pled guilty, the facts were such that his plea was not
9 valid, Your Honor --

10 THE COURT: I already resolved that, Counsel. A few
11 months ago I determined that the plea was voluntarily and
12 knowledgeably entered and was aware of all the conditions.

13 And if we go through the mental evaluation, at the
14 time that he requested withdrawal of the plea, mention was
15 mentioned to his drug addiction, also the bipolar disorder that
16 supposedly he had been diagnosed at age 14.

17 If we look at this evaluation, and certainly, I think
18 the evaluation does support very clearly the Court's position
19 that his plea was knowledgeably and voluntarily entered. And,
20 therefore, I've already ruled on that.

21 So we'll continue here for the sentence. That's what
22 we are here for.

23 MS. LIZARRIBAR-MASINI: Okay. The question of the
24 Court was if I had any other medical records.

25 I do not have any other medical records.

1 THE COURT: All right.

2 (The defendant lowered his hand.)

3 THE COURT: All right.

4 MR. BAZAN: Your Honor, I think it's proper that we
5 should clear up the fact that an Order of this Court was given
6 to the Bureau of Prisons so that Dr. Romey could go interview
7 the defendant and report whatever determination she had.

8 I haven't heard anything.

9 THE COURT: Carol Romey.

10 MS. LIZARRIBAR-MASINI: She did go once, Your Honor,
11 to see him. However, as, again, as we did not have his full
12 medical records --

13 THE COURT: She went to see him after we received the
14 evaluation from Bureau of Prisons.

15 MS. LIZARRIBAR-MASINI: Yes, she did, Your Honor.

16 THE COURT: So she had the evaluation.

17 MS. LIZARRIBAR-MASINI: She had it.

18 But I did not have records from the other doctors that
19 he had seen, Your Honor.

20 So it was like having some and not having others. And
21 she couldn't do anything else, Your Honor, except tell me, "I
22 can't do anything right now. If you get them, call me back."

23 THE COURT: Apparently, the Bureau of Prisons could do
24 something, even without all the complete records. And this is
25 very well set forth and plain in the report that your client,

1 there is no mental disorder whatsoever.

2 Do you care to state anything else at this time?

3 MR. BAZAN: Nothing, Your Honor.

4 THE COURT: Okay. All right. Did you read the
5 presentence report?

6 MS. LIZARRIBAR-MASINI: Yes, Your Honor, I did.

7 THE COURT: Did you discuss it with your client?

8 MS. LIZARRIBAR-MASINI: Yes, Your Honor. We have had
9 it for almost two years now.

10 THE COURT: All right. Since 2007.

11 MS. LIZARRIBAR-MASINI: That is correct.

12 THE COURT: Dated June 7 -- no, it's dated --

13 MS. LIZARRIBAR-MASINI: We had filed objections to it,
14 Your Honor. I do believe, and again I restate to the Court,
15 that this defendant, the use of drugs, he has had for years
16 should be shown in the P.S.R., Your Honor. Obviously, it has
17 changed and hindered his life and --

18 THE DEFENDANT: Your Honor, may I approach to you?

19 THE COURT: Yes.

20 THE DEFENDANT: Perfect. In March 6, 2007, I came to
21 change my plea. I came under pressure. I wasn't sleeping for
22 a couple of days. I was using prescription medication that you
23 can find in MDC, under illegal circumstances. Okay?

24 During that day I got the pressure of my family over
25 here. It was not intelligently and not voluntarily to sign.

1 Okay? I've got the pressure of my mother, my family, over
2 here, at that time. All right?

3 That day -- I've got the transcript over here of that
4 day in which, one, the Court, there is a Plea Agreement.

5 Mrs. Lizarribar said, yes, and it has been filed with
6 the Court in a few minutes ago, Your Honor.

7 That's what she said to you. Okay?

8 It's 27 years. How you can study a plea of 27 years
9 in minutes? We are talking about maybe 10, 20, 25 minutes to
10 study 27 years.

11 I believe that's no time.

12 As a fact, after that day, I did not see my attorney
13 about two-and-a-half months after that. Inclusive, we got an
14 argument in MDC, because I told her that I made that under
15 influence. Okay? And I told her that I want to change that
16 plea because I want to present my innocence in this Court.

17 Okay? All I want to do is present that I'm innocent
18 in this court.

19 THE COURT: All right. Thank you.

20 Counsel, is there anything you would like to state to
21 the Court on behalf of your client before I pronounce sentence?

22 MS. LIZARRIBAR-MASINI: As to sentence, Your Honor, I
23 would request that the Court sentence him to the lower possible
24 sentence in his case.

25 However, again, Your Honor, I state to the Court that

1 I think the outcome should be trial and not a sentence;
2 however, the Court has ruled on that. And I don't have
3 anything to say as to sentencing, Your Honor.

4 THE COURT: Thank you.

5 THE DEFENDANT: Your Honor?

6 THE COURT: Mr. Santiago, do you care to state
7 anything before I pronounce sentence?

8 THE DEFENDANT: Yes.

9 THE COURT: Go ahead.

10 THE DEFENDANT: I believe this is entrapment, because
11 before I signed this plea, we always got ready to start trial.

12 That day, that caught me by surprise. My family, my
13 mother, everybody. Okay? I didn't got time to study this.
14 Okay?

15 Twenty-five minutes, 30 minutes in one of the cells
16 over here, is no time.

17 Plus that, she came yesterday to MDC Guaynabo and
18 telling me that tomorrow we are going to sentence.

19 I mean, I'm not prepared for this. And all I want to
20 show to this Court is that I'm innocent, because I've got proof
21 that I can prove that I'm innocent in this court.

22 And I believe that I deserve to prove, that not only
23 to me, but to my family that is over here present, and other
24 people here.

25 THE COURT: Thank you.

1 Anything from the Government?

2 MR. BAZAN: Your Honor, just to reinstate the Plea
3 Agreement where Government agreed to make a recommendation
4 along with defense counsel of 327 months of imprisonment.

5 That is the agreement of the parties pursuant to the
6 Plea Agreement at paragraph 10, page 5, of the Plea Agreement,
7 it says, "Specific sentence recommendation. As part of this
8 Plea Agreement, the parties agree to recommend a sentence for
9 Count Five of 324 months of imprisonment."

10 THE DEFENDANT: Your Honor, can I speak?

11 THE COURT: Yes, go ahead.

12 THE DEFENDANT: All right. I don't want to disrespect
13 over here, nobody. But if somebody is put in my shoes, do you
14 think you've got enough time to sign that plea in minutes?
15 Because not even an hour, minutes, to study a plea that I'm
16 going to sign my 27 years when I'm innocent, because my family
17 tells me, "If you don't sign that, you're going to get life."

18 My auntie right there, that is almost -- I can say not
19 almost, it's my mother. She needs me.

20 And all I want to prove is that I'm innocent in this
21 Court.

22 In 27 minutes, 30 minutes, 40 minutes, and it's over
23 here in this paper that the Court gives it to me.

24 A few minutes ago. It has been filed with the Court
25 in a few minutes ago.

1 In other words, during the two-and-a-half years that I
2 was here, I never received no, but absolutely no plea. Exactly
3 just when I came that day over here.

4 THE COURT: Thank you.

5 Let me put some things on record.

6 The report that was prepared after the evaluation of
7 this defendant, it's a very thorough report. For example, at
8 page 4, the third paragraph --

9 MS. LIZARRIBAR-MASINI: Of which report, Your Honor?
10 I'm sorry.

11 THE COURT: July 31st.

12 THE DEFENDANT: Inclusive, the day that she came,
13 about 4, 6, 7, maybe 8 weeks came to visit me, we got a big
14 argument about that.

15 THE COURT: It states here. "Despite his report of
16 excessive Xanax abuse and a history of being diagnosed with
17 bipolar disorder, there is no indication of behavioral and/or
18 irrational dyscontrol.

19 "He does not currently demonstrate or report any signs
20 or symptoms of a major mental illness that would require
21 psychological or psychiatric intervention."

22 Again, on top of page 5.

23 "The defendant has not presented any symptomatology
24 suggestive of a need for psychiatric hospitalization to date."

25 At the second paragraph in the personal assessment

1 part. He was administered the MMPI-II, which is a test to
2 obtain information regarding self perception and personality.
3 The report goes on to state that the responses provided by the
4 defendant were determined to be of questionable validity, as he
5 appears to have exaggerated symptoms associated with
6 significant physical cognitive disability which is not
7 substantiated by his history.

8 And at the fourth paragraph where it states that he
9 reported high levels of fatigue, exhaustion and headaches, as
10 well as sleep problems, which had been present for many years.

11 It goes to state that while he indicated that he
12 experiences depression, irritability, and that his mood flips
13 easily, he appeared to struggle to define his reported
14 depression in any depth.

15 Irrespective of this, his complaints do not reflect
16 any severe psychological ailments and are more likely to be
17 indicative of his current legal predicament, the length of his
18 pretrial detention and concern over his immediate and long term
19 future.

20 He also was administered the semi-structured interview
21 ECST-R to evaluate his competency, skills, with regard to the
22 present case. This was done through an interpreter in the
23 Spanish language.

24 And it states at page 6, review of his responses in
25 conjunction with his statements regarding difficult events and

1 decisions made by the judge in his case, he indicated that he
2 possesses reasonable competence in related functional ability
3 in the requisite domains.

4 He demonstrated sound factual understanding of the
5 present criminal proceedings.

6 At page 6, third paragraph, he demonstrated a clear
7 rational understanding of the criminal proceedings, as he
8 questioned the necessity of this evaluation after reviewing the
9 Court's ruling which denied his motion for a Change of Plea.

10 And this was done because of the insistence that he
11 had been diagnosed at age 14 with a bipolar condition,
12 disorder.

13 He also expressed an understanding of the impact of a
14 lengthy prison sentence on his life, as well as the potential
15 for a long imprisonment term as a result of his guilty plea in
16 this case.

17 He did not demonstrate any evidence of emotional
18 dyscontrol, impairment in judgment or symptoms of formal
19 thought disorder which would otherwise impact his ability to
20 rationally understand the present legal case.

21 Throughout the evaluation process, his statements were
22 precise, lucid, and well organized.

23 His recall was appropriate and he provided information
24 in a chronological order that reflect his ability to think
25 rationally and abstractly.

1 Based on this, it appears that he possesses a rational
2 understanding of the legal proceedings.

3 He demonstrated strong interpersonal skills and
4 appeared quite capable of cooperating with others in the
5 pursuit of a common goal.

6 Though he indicated that he disagrees with his
7 attorney, he described her as a very intelligent person that is
8 professional and knows the law.

9 His expectations of her are reasonable, as he
10 indicated he would like her to fight for him and try to prove
11 his innocence.

12 He expressed a belief that they would continue working
13 together, though he stated that their disagreements were
14 common.

15 The diagnosis. Axis I, anxiolytics. Xanax
16 dependence. Cocaine dependence in remission in a controlled
17 environment.

18 Axis II. Antisocial personality disorder.

19 Axis III. Refer to medical records.

20 Axis IV. Legal problems.

21 Axis V. Current GAF at 75.

22 Based on this assessment, comprehensive clinical
23 interview, and available and review of available records, it
24 appears that Mr. Santiago meets the diagnostic and statistical
25 manual of mental disorders, fourth edition, text revision,

1 criteria for anxiolytic dependence, cocaine dependence, and
2 antisocial personality disorder.

3 While he reported a history of bipolar disorder, he
4 did not manifest any symptoms consistent with this disorder,
5 nor did he report having ever experienced any symptomatology
6 suggestive of past manic episodes.

7 Additionally, he reported a history of illicit
8 substance dependence could easily account for irritability,
9 mood swings, low frustration tolerance reported to have existed
10 in the past.

11 Substance dependence is generally characterized by a
12 constellation of cognitive, behavioral, and psychological
13 symptoms that indicate persistent use of a substance despite
14 significant substance-related problems.

15 The prognosis. Mr. Santiago Miranda's mental health
16 prognosis is determined to be good. There is no indication of
17 any significant mental illness that would require psychological
18 or psychiatric intervention at the present time.

19 He has managed to adjust to continued detention
20 without any evidence of significant psychological distress.

21 He appears to possess sufficient coping mechanism
22 necessary to manage current situational stressors.

23 He does not appear to be suffering from any severe
24 mental disease or defect.

25 Emotional complaints are likely to be a subsequence of

1 chronic drug dependence issues.

2 Formal diagnosis of severe mental illness in the
3 absence of any significant period of abstinence from illicit
4 substances is not likely to be of any clinical liability in
5 this case.

6 All his psychological complaints are easily explained
7 as a consequence of his drug dependence history.

8 With regard to competency-related functional
9 abilities, his ability to understand the legal proceedings and
10 to properly assess his counsel, do not appear to be noticeably
11 impaired.

12 The defendant presently appears to be appropriate for
13 continuation of legal proceedings.

14 THE DEFENDANT: Your Honor, please, another word.

15 All human beings over here in one part of our life, we
16 need some psychological help for different reasons. Okay?

17 Not only that, everybody commits mistakes in different
18 ways. Okay?

19 I understand that I deserve an opportunity to prove my
20 innocence. Okay?

21 Plus, on top of that, that lady over there that used
22 to be my wife, is my baby girl. Her brother never wanted me
23 alone with her. Okay?

24 I never dealt with drugs in my life. Yeah, I used
25 drugs. But that don't mean that I'm dealing with drugs or got

1 to do something with people, because I came from a very good
2 family.

3 And I am requesting you and this Court the opportunity
4 to prove my innocence.

5 And I know Mr. Bazan over here is a competent person.
6 But sometimes other people try to take advantage to (Spanish).

7 THE INTERPRETER: To get ahead. And they want to bury
8 the other person just so they can get ahead.

9 THE COURT: All right. On March 6, 2007, Omar Ramon
10 Santiago Miranda pled guilty to Count Five of the Second
11 Superseding Indictment in Criminal 04-414, which charged
12 violation of 21, United States Code, 841A1, 846.

13 The November 1, 2008, edition of the now-advisory
14 United States sentencing guidelines has been used to apply the
15 guideline adjustments pursuant to Guideline 1B1.11A.

16 Based on Guideline 2A1.1, a base offense level of 43
17 is determined, as a victim was killed under circumstances that
18 would constitute murder under 18, United States Code, 1111.

19 There are no other applicable guideline adjustments.

20 Based on a total offense level of 43 and a Criminal
21 History Category of III, the guideline imprisonment range in
22 this particular offense is life imprisonment; a fine range of
23 \$25,000 to \$4,000,000; plus, a supervised release term of at
24 least five years.

25 Before the Court is a 39-year-old individual who

1 possesses strong family ties, has a prior conviction for
2 attempted murder.

3 Furthermore, the Court notes that the defendant has a
4 history of abuse of controlled substances.

5 The Court has considered the nature and circumstances
6 of the offense and the other sentencing factors set forth in
7 18, United States Code, 3553A.

8 Specifically, the Court will impose a sentence
9 sufficient but not greater than necessary to reflect the
10 seriousness of defendant's actions.

11 Julio?

12 (The Court is speaking with the probation officer.)

13 THE COURT: Again, specifically, the Court will impose
14 a sentence sufficient but not greater than necessary to reflect
15 the seriousness of the defendant's actions.

16 The Court knows that the defendant has failed to
17 accept responsibility for his actions by attempting to withdraw
18 a valid guilty plea. And also in the allocution today he is
19 claiming his innocence.

20 The Court also has considered the Plea Agreement and
21 the recommendation made in the Plea Agreement of 324 months.

22 Of course, that was taken in consideration, that the
23 defendant was accepting responsibility.

24 In any event, the Court believes that a sentence of
25 380 months is sufficient but not greater than necessary to

1 reflect the seriousness of the defendant's actions. And
2 although it's a variance, the Court understands that, as such,
3 it's necessary but not greater than necessary.

4 Therefore, it is the judgment of this Court that the
5 defendant is hereby committed to the custody of Bureau of
6 Prisons to be imprisoned for a term of 380 months.

7 Upon release from confinement, you shall be placed on
8 supervised release for a term of five years to be served under
9 the following conditions.

10 You shall not commit another federal, state, or local
11 crime and observe the standard conditions of supervised release
12 recommended by the sentencing commission adopted by this Court.

13 You shall not unlawfully possess controlled substances
14 and refrain from possessing firearms, destructive devices, and
15 other dangerous weapons.

16 You shall refrain from any unlawful use of a
17 controlled substance and submit to one drug test within 15 days
18 of release; thereafter, submit to random drug testing, not to
19 exceed 104 samples per year, in accordance with the drug
20 aftercare program policy of the U. S. probation office as
21 approved by this Court.

22 If any such samples detect substance abuse, you shall
23 participate in a drug treatment program, whether inpatient or
24 outpatient, in accordance with such policy.

25 You will be required to contribute to the cost of

1 services rendered based on the ability to pay or the
2 availability of third-party payments as approved by this Court.

3 You shall participate in a vocational training and/or
4 job placement program recommended by the probation office.

5 You shall submit to a psychiatric and/or psychological
6 evaluation to determine if any treatment is required, and if
7 so, you will engage in such treatment as arranged and approved
8 by the probation officer until duly discharged.

9 You shall provide the probation officer access to any
10 financial information upon request.

11 You shall submit your person, residence, office or a
12 vehicle to a search conducted by a United States probation
13 officer at a reasonable time and in a reasonable manner, based
14 upon reasonable suspicion of contraband or evidence of a
15 violation of condition of release.

16 Failure to submit to such a search may be grounds for
17 revocation.

18 You shall warn any other residents that the premises
19 may be subject to searches pursuant to this condition.

20 You shall cooperate in the collection of a DNA sample
21 as directed by the U. S. probation officer pursuant to the
22 revised DNA collection requirements in 18, United States Code,
23 3563A9.

24 Having considered your financial condition, a fine is
25 not imposed.

1 A special monetary assessment in the amount of One
2 Hundred Dollars is imposed as required by law.

3 I advise you that you have a statutory right to appeal
4 your conviction and sentence if you believe that your guilty
5 plea was somehow unlawful or involuntarily or if there was some
6 other fundamental defect in the proceedings that was not waived
7 by your guilty plea.

8 You also have a statutory right to appeal the sentence
9 in your case if you feel that the same was imposed in violation
10 of the law as a result of an incorrect application of the
11 sentencing guidelines or that it was unreasonable.

12 Any notice of appeal must be filed here in the
13 district court within ten days after the judgment is entered.

14 If you wish to appeal and cannot pay for the cost of
15 the appeal, you may apply for leave to appeal in forma
16 pauperis.

17 Any remaining counts of the indictment are hereby
18 dismissed as to this defendant.

19 That is the sentence of Court.

20 Anything further, Counsel?

21 MS. LIZARRIBAR-MASINI: I would ask, Your Honor, that
22 he be given drug addiction programs while being in jail.

23 As we know, he has used drugs and does use drugs
24 presently.

25 And also that he serve his time as close to this

1 island as possible. Florida would be the best place so his
2 family may see him. His mother lives there now. And his three
3 small children live there now, in Florida.

4 THE COURT: All right. The Court recommends to the
5 Bureau of Prisons that whatever institution is designated to
6 serve this sentence, that defendant be allowed to participate
7 in any substance abuse treatment program.

8 Also, that he receive any psychological or psychiatric
9 treatment to see if any treatment is necessary, then he should
10 receive the same.

11 And also the Court recommends to the Bureau of Prisons
12 that the institution designated to serve this sentence be
13 located in the State of Florida, if at all possible.

14 Anything else, Counsel?

15 MS. LIZARRIBAR-MASINI: I don't have any else, Your
16 Honor.

17 THE COURT: Thank you. You may withdraw.

18 Court will recess until 1:30 this afternoon.

19 (The hearing was concluded.)

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REPORTER'S CERTIFICATE

I, JOYCE DEL VALLE, Official Court Reporter;
DO HEREBY CERTIFY that the foregoing transcript
is a full, true and correct record of the testimony that was
taken down by me by machine shorthand and thereafter
transcribed by means of computer aided transcription method.
I FURTHER CERTIFY that I am in no way interested
in the outcome of the case mentioned in said caption.

Signed: S/JOYCE DEL VALLE